

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

21 Cr. 466 (S-1) (HG)

-against- :

DECLARATION

RALPH DiMATTEO, et al., :

Defendants. :

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GERALD J. McMAHON, pursuant to 28 U.S.C. Section 1746, declares as follows:

1. I am the attorney of record for defendant Ralph DiMatteo (“defendant” or “DiMatteo”) and, as such, am fully familiar with the facts and proceedings herein.

2. This declaration is submitted in support of defendant’s motion for additional discovery and a limited bill of particulars, and for leave to join the motions of co-defendants where applicable.

The Indictment

3. The indictment (21 Cr. 466 (S-1) (HG)) (“Ind.”) was filed on April 13, 2022 and charged fifteen defendants with various crimes including, but not limited to, racketeering (“RICO”), Hobbs Act extortion, identity fraud conspiracy, false statements, extortionate collection of credit, money laundering, conspiracy to distribute and possess marijuana, health care fraud, conspiracy to embezzle health care benefit funds, and transportation and possession of ammunition.

4. The Ind. spans the period of time from approximately 2001 through September 2021, and consists of 47 pages containing 100 paragraphs of factual allegations, charging 15 defendants with one or more alleged crimes.

5. As recited in one of its early paragraphs, the Ind. alleges that:

The defendants and their co-conspirators committed a variety of crimes – including extortion, loansharking, fraud and drug trafficking – that served principally to enrich themselves and to promote the continued operation of the Colombo crime family.

Ind., ¶ 22 (emphasis added).

6. The government has declined to provide a list of those “co-conspirators”.

Additional Discovery and Bill of Particulars

7. On July 10, 2022, defendant DiMatteo served a detailed demand for discovery on the government.

8. While the government has produced a great deal of discovery material, it has not produced all the material defendant is entitled to under Rules 7(f) and 16 of the Federal Rules of Criminal Procedure and the Fifth and Sixth Amendments to the United States Constitution.

9. The government did not provide the following requested materials:

- a. *list of unindicted co-conspirators*: see *United States v. Kanekar*, No. 17 Cr. (SJ), 2020 WL 730353, at *6 (E.D.N.Y. Feb. 12, 2020); *United States v. Barrett*, 153 F. Supp. 3d 552, 572-72 (E.D.N.Y. 2015); *United States v. Martoma*, 12 Cr. 973 (PGG), 2013 U.S. Dist. LEXIS 79341, 2013 WL 2435082, at *18-20 S.D.N.Y. June 5, 2013; *United States v. Arreola*, 05 Cr. 1275 (LMM), 2006 U.S. Dist. 22535, 2006 WL 1071756, at *3 (S.D.N.Y. April 21, 2006); *United States v. 91 F. Supp. 2nd 565*, 572-74 (S.D.N.Y. (2000)); *United States v. McGuinness*, 764 F. Supp. 888, 894 (S.D.N.Y. 1991);
- b. *statements of non-government-witness co-conspirators*: see Fed.R.Evid.

801(d)(2)(E);

*c. names and addresses of witnesses to the offense charged in the indictment whom the government does **not** intend to call at trial: see United States v. Stevens, 985 F.2d 1175, 1180 (2d Cir. 1993) (“Evidence that the government does not intend to use in its case-in-chief is material if it can be used to counter the government’s case or to bolster a defense.”); United States v. Ruiz, 702 F. Supp. 1066, 1070 (S.D.N.Y. 1989); United States v. Kearney, 436 F. Supp. 1108, 1112 (S.D.N.Y. 1977); United States v. Cadet, 727 F.2d 1453, 1468-69 (9th Cir. 1984).*

10. For the reasons set forth in the accompanying memorandum of law, the Court should order the government to provide this additional discovery and bill of particulars without delay.

Leave to Join the Motion(s) of Co-Defendants

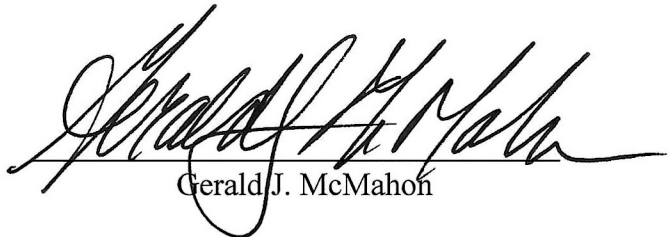
11. In the interests of judicial economy, defendant DiMatteo seeks leave of the Court to join in the motions of co-defendants to the extent they are applicable to him.

Other Relief

12. Defendant requests that the Court grant the relief sought herein, and such other and further relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 14th day of November, 2022.


Gerald J. McMahon